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No._____

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1995

GERARD HENNESSEY, Pro Se,
and
LINDA ANN VEGA, Pro Se,
Petitioners,

versus

L. J. Blalack, Melissa Martin,
Robert Flowers, Lubbock County,
Rosemary Chivers, Don McBeath,
John Neal, Doug Greathouse,
Julie Martin, Patsy Summers, J. David Nelson et al,
Respondents.

On petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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63 pp

QUESTIONS PRESENTED

1. Whether a Justice of the Peace may be granted immunity against civil damages for false arrest when the state supreme court has held that immunity cannot be granted without a written contempt citation, as required by state law for direct contempt?

2. Whether summary judgment may be granted when fundamental and substantial matters of fact and law remain at issue?

3. Whether judgment on the pleadings may be granted after a defendant has filed external material?

4. Whether a Justice of the Peace who conspires with another over an extended period of time to produce a series of false affidavits--one of which the state court of appeals found to be perjured--about his violation of citizens' civil rights, for the stated purpose of obstructing official investigations, may be granted immunity from civil damages for civil rights violation?

5. Whether NOW v Scheidler mandates discovery before granting summary judgment when evidence of civil rights conspiracy is presented?

6. Whether the interests of a major political contributor to a judge's election campaign fund may be protected by unlawful arrest of a person who requests access to public records that contain evidence of the contributor's unlawful acts?

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TABLE OF AUTHORITIES

Adams v McIlhany 764 F2d 294 (1985) 10

Braatelien v United States 147 F2d 888 (1945) 12

Brewer v Blackwell 692 F2d 387 (1982) 9

Craig v Harney 67 S.Ct. 1249 (1947) 8

Cronen v Nix 611 S.W.2d.651 102 SCt 132 and 667 8

Ex parte Cadena (App. 13 Dist. 1991) 811 S.W.2d 725 11

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National Organization of Women, Inc. v Scheidler, 114 S.Ct.
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Price v Burdin 207 S.W. 2d. 228 (1948) 8

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Rheuark v Shaw 628 F2d 297 (1979) 9

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A. Case No. 94-10372, U.S. Court of Appeals, Fifth Circuit: Opinion and Judgment, February 2, 1995

B. Case No. 94-10373, U.S. Court of Appeals, Fifth Circuit, January 26, 1995

C. Case No. 94-10530, U. S. Court of Appeals, Fifth Circuit: Opinion and Judgment, March 8, 1995

D. Case No. 07-04-0199-CR, Texas Court of Appeals, Seventh District at Amarillo, Panel D, March 16, 1995: Melissa Martin v. the State of Texas

E. Lubbock County Grand Jury Indictments of L. J. Blalack and Melissa Martin, January 8, 1993.

I. OPINIONS BELOW

This is a Petition for Writ of Certiorari on denial by the Fifth Circuit Court of Appeals of Appeals Nos. 94-10372. -10373, and -10530 from the United States District Court for the Northern District of Texas (Nos. 5:93-CV-78-C, 5:94-CV-74-C, and -112-C) in unpubli hed opinion dated January 6, ebruary , and March 8, 1995 respectively.

The District Court severed the following complaints from the original complaint, styled 5:94-CV-74-C and -112-C and dismissed against the following defendants and these dismissals were appealed to the Fifth Circuit: dismissal of complaint against L. J. Blalack [Doc224-5]; dismissal of complaint against J. David Nelson [Doc258-9]; denial of Motion for Reconsideration of Dismissal of RICO Claim [Doc217].

Still before the Fifth Circuit is Petitioners' appeal 94-10629 against the District Court's reversal of the May 12, 1994, jury award of $10,000 in damages (No. 5:93-CV-78-C) against County Judge Don McBeath and Lubbock County whose actions and inactions the jury found were the proximate cause of Petitioner Hennessey's false arrest by L. J. Blalack.

II. JURISDICTION OF THE SUPREME COURT

Jurisdiction of the Supreme Court is indicated by Rule 10.1 of the Rules of the Supreme Court, as follows:

(a) The Judgment of the Fifth Circuit Court of Appeals is in conflict with decisions of other United States Courts of appeals, and with state courts of last resort in that it affirmed the District Court judgments and orders that:

- found that L. J. Blalack had held Petitioner Gerard Hennessey in direct contempt, despite presentation of sworn statements and court testimony that Petitioner Hennessey was arrested before he said anything in Blalack's court, and that a bailiff had been called "to arrest someone" after Blalack's clerk Melissa Martin had directed Hennessey to go into the court to ask Blalack for access to the Suter case

records. The Lubbock County Grand Jury, and the U.S. District Court jury for the May 9-12, 1994, trial, both considered the evidence including Blalack's testimony and found that Gerard Hennessey had been falsely arrested; the Grand Jury also took the rare action of indicting Blalack for perjury on his testimony to them.

- found that L. J. Blalack had "coached" his staff to produce statements about his contempt citation of Gerard Hennessey, a finding in direct opposition to that of the Lubbock County Grand Jury which indicted Melissa Martin for perjury because she made a false sworn statement; to that of Lubbock District Court Judge Will Dodson who also found she had commited perjury; and that of the Seventh District of Texas Court of Appeals which held that Blalack instructed her and others to make a false sworn statement, that she acquiesced, and that she had thereby committed perjury.

(b) The Fifth Circuit has decided important questions of federal law which have not been, but should be, settled by the Supreme Court and other questions in a way that conflicts with decisions of the Supreme Court, the judgments:

- granted L. J. Blalack absolute immunity for false arrest of Petitioner Hennessey, despite the fact that no contempt citation documents--as are required by Texas statute to substantiate arrest for direct contempt--exist;

- dismissed Petitioners' conspiracy complaint against J. David Nelson, principal contributor to L. J. Blalack's 1988 election campaign fund, on grounds that the complaint had been filed out of time (four years after an initial attempt by Nelson in 1989 to prevent Hennessey gaining access to the Suter case records). A conspiracy action may be filed within ten years. Petitioners claim that the motivation for Melissa Martin's and L. J. Blalack's outbursts and Blalack's false arrest of Gerard Hennessey on April 9, 1991 was to prevent access to the Suter case files, which contain evidence that Nelson violated the Federal Fair Debt Collection Practices Act.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioners' claims are based on the following, the texts of which are reproduced in the Appendix:

A. Constitutional provisions

1. Amendments to the United States Constitution: Articles IV, V, XIV(1)

2. Constitution of the State of Texas: Article I, §9.10.13.17. 19,29

B. Statutory Provisions

1. Federal laws and regulations

Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. § 1981-5
Fair Debt Collection Practices Act 15 U.S.C. §1692
Judiciary and Judicial Procedure 28 U.S.C. §144, 455(b)(5), 1291-4
Federal Rules of Civil Procedure Rules 8, 18, 23, 26, 33,36,37,41,56,57,62
Rules of the Supreme Court
28 U.S.C. §1291
U.S.C.A. 18 §241
42 USC § 1981-5 (Civil Rights Act)

2. State laws

Texas Government Code Section 27.004 (Open Records Act)
Texas Government Code Title 61 Article 3908
Texas Penal Code Title 8 Chapter 37
Texas Penal Code Title 18 Article 1510

IV. STATEMENT OF THE CASE

This Petition respectfully requests the Supreme Court to issue a writ of certiorari in order to review decisions of the

Lubbock Court of the Northern District of Texas, affirmed by the Fifth Circuit Court of Appeals, in hearing Petitioners' complaint 5:93-CV-78 [Doc1:Pp1-101] filed April 7, 1993 against former Lubbock County Justice of the Peace L. J. Blalack and other state actors who Petitioners claim conspired to violate civil rights of Petitioners and others.

A. Fifth Circuit opinions contradict four finders of fact.

Petitioners assert that the Fifth Circuit Court of Appeals' decision dismissing their complaint against L. J. Blalack is in opposition to decisions by four separate finders of fact and law:

1. Lubbock County Grand Jury: Indictment of L.J. Blalack for felony aggravated perjury with regard to his testimony which was the same as the statements he instructed his staff to make on April 9, 1991.

2. Lubbock District Court Judge Dobson, to whom Melissa Martin pled no contest to a charge of perjury for the false statement she made about Petitioner Hennessey's conduct in Blalack's court.

3. U.S. District Court Northern District of Texas, Lubbock Division: On May 12, 1994, the trial jury found that the actions and failures to act by Lubbock County Judge Don McBeath and Lubbock County were the proximate cause of Petitioner Hennessey's false arrest in Blalack's court on April 9, 1991.

4. Texas Court of Appeals, Seventh District: On March 16, 1995, the Court of Appeals affirmed Melissa Martin's conviction for perjury and found that L. J. Blalack had directed her to make the false statement, with which she acquiesced, in order to obstruct an official State of Texas investigation they anticipated could result from Petitioner Hennessey's false arrest.

B. The Fifth Circuit opinion affirming dismissal of the complaint against L.J. Blalack contains errors of fact and law

Petitioners claim that the Fifth Circuit's opinion dismissing their complaint against L. J. Blalack contains the following errors of fact and law:

1. No altercation occurred in Blalack's courtroom, and there was no heated exchange between Hennessey and Blalack.

In the tape recording of Petitioner Hennessey's visit to Blalack's office, Melissa Martin can be heard suddenly inflicting loud verbal abuse on Hennessey without provocation shortly after he requested access to the Suter case files. She can also be heard telling Hennessey that he would have to ask Blalack personally for access to the court records.

Statements by witnesses, including Blalack's clerk Tami Pisarski, and Lubbock County Bailiff Jay Helton, as well as statements given by Blalack's clerks Julie Martin, Melissa Martin and RoseMarie Chivers to Texas Ranger Jim Mull, all indicate that there was no heated exchange--just Blalack yelling loudly at Hennessey. Witnesses related that Reporter Mike Erickson, who was sitting next to Hennessey also waiting to speak with Blalack, was called to the bench and was also yelled at without being allowed to speak.

2. Blalack did not "coach" his staff; he suborned perjury, conspired to commit perjury, and committed aggravated perjury in his attempts to claim that Hennessey had been loud and abusive in his court.

When Blalack instructed his court clerks to prepare affidavits stating that Hennessey had been loud and abusive, he was not "coaching" them; he was suborning perjury and conspiring to commit perjury, for which Melissa Martin was subsequently convicted. Her conviction was affirmed by the Texas Court of Appeals on March 16, 1995. Blalack himself was indicted for making the same statement about Hennessey's conduct to a Lubbock County Grand Jury in December, 1992.

3. Blalack never cited Hennessey for contempt.

Due process is required, including service, opportunity to

seek counsel, and a hearing as to the facts, before a judge may lawfully arrest a person for constructive contempt, which covers all contempt citations except for acts that occur in the courtroom. Direct contempt, which occurs in the presence of the judge while he is carrying out his official duties--usually in the courtroom--is defined as conduct which interferes with or impedes the orderly administration of justice. Persons carrying out such conduct can be arrested and then cited BUT the judge must then make out a citation and prepare a statement concerning the circumstances under which the person was arrested. There is no document in Blalack's court records that mentions Petitioner Hennessey; for the entire month of April 1991, all the shucks are in serial order and all deal with other cases. Thus, by Texas law, Petitioner Hennessey was unlawfully arrested.

4. Because Hennessey had no inkling that he was to be arrested as he sat quietly waiting to speak to Blalack about access to court records, and Melissa Martin had summoned the bailiff to arrest Hennessey as he entered the courtroom long before he came before Blalack, Hennessey's arrest cannot have been for anything he did in the presence of the court.

As can be heard in the tape recording of the April 9, 1991 incident, Melissa Martin told Hennessey he would have to request access to court records in person from Blalack. As Hennessey was entering the courtroom at her suggestion, Melissa Martin summoned Bailiff Jay Helton to "come and arrest someone." As Helton came into the courtroom **Blalack was yelling at Reporter Mike Erickson, not allowing him to speak and Hennessey was sitting in court, waiting to talk to Blalack about access to the Suter case records.**

Summoned to the bench, Hennessey was stunned when Blalack yelled at him, gave him no opportunity to speak, and ordered him arrested. Throughout this incident, Hennessey remained respectful and, when finally allowed to speak, addressed Blalack as "Judge" and "Your Honor". There was no evidence of any altercation in Blalack's court, just Blalack's outburst and threats to Erickson and Hennessey, followed by his arrest of Hennessey.

The Fifth Circuit opinion cites the Texas Court of Criminal

Appeals: "a contempt citation based on actions occurring in the presence of the court does not require prior notice or a hearing." Because Melissa Martin summoned Bailiff Jay Helton to arrest Hennessey **as he was entering the court at her suggestion for the purpose of requesting access to court records from Blalack, any contempt citation would have to relate to something that occurred outside the court.** However, **in order to arrest a person for contempt with regard to any action not occurring in the presence of the court, prior notice or a hearing is required.** No such notice or hearing took place.

5. Blalack suborned perjury in an attempt to protect himself from an investigation by the Texas Judicial Conduct Commission because he knew he had falsely arrested Hennessey

Blalack stated to Melissa Martin that he was concerned that the Texas Judicial Conduct Commission might investigate his false arrest of Hennessey. As soon as Hennessey was released and left Blalack's court, Blalack told Melissa Martin and his other staff to prepare false statements that would justify his arrest of Hennessey on grounds of direct contempt. He subsequently showed these statements to Robert Flowers, Chief Executive Officer of the TJCC, to John Neal, Special Prosecutor for Petitioners' Ex Rel Petition for removal of Blalack from office, and to Terry McEachern, Special Prosecutor whose Grand Jury indicted Blalack for aggravated perjury, official misconduct, and official oppression in relation to this incident, the false arrest of Linda Ann Vega and her family in 1990, and his misuse of County property.

Blalack's instructions to his staff to prepare the false affidavits are relevant to Hennessey's assertion that immunity should be denied Blalack, because they reflect his **practice of making and having his staff make similar false statements in order to obstruct investigations into his widely-known and longstanding pattern of civil and constitutional rights violations.** Melissa Martin told Texas Ranger Jim Mull that she had produced many more false statements of the same sort, and she asked him to help her retrieve these false statements from Blalack. Petitioners' complaint is not only concerned with their two incidents, but also with Blalack's longstanding pattern and practice of intentional and flagrant violation of civil and constitutional rights. In Craig v

Harney 67 S.Ct. 1249 (1947) the Supreme Court held that "There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it." Thus Blalack had no right as a member of the judiciary to direct his staff to make statements that would change the record of events as they occurred in his courtroom.

C. Judicial immunity applies only to judicial acts

1. Granting access to Justice of the Peace court records is not a judicial act.

The Texas Attorney General's Open Records Decision No. 25 gives court records of Justices of the Peace the status of public records, and requires that access to these records shall be granted to all interested parties at all reasonable times. As a result, there is no judicial discretion involved in granting a member of the public access to records in a Justice of the Peace court in Texas. The tape recording of the April 9, 1991 incident clearly shows that Gerard Hennessey entered Blalack's courtroom with the expectation that he was seeking access to public records, and that in all other Lubbock County court offices, this function was carried out by clerks. He clearly had no idea he would be involved in a judicial proceeding, and had no judicial business before Blalack.

2. Arresting a member of the public for constructive contempt without a warrant is not a judicial act

False imprisonment is defined in Texas Penal Code §20.02 as "intentionally or knowingly restrain(ing) another person." In Whirl v Kern 407 F2d 781 90 SCt. 210, 396 U.S. 901 (5th Circuit, 1969) and Cronen v Nix 611 S.W.2d.651 102 SCt 132 and 667, the Supreme Court let stand the Fifth Circuit's finding that false imprisonment is intentional detention of the person without the other's consent and without adequate legal justification.

In Price v Burdin 207 S.W. 2d. 228 (1948) the Texas Civil Appeals Court held that a person seated in the office of the justice of the peace talking to the wife of that official at the latter's invitation and while awaiting the return of the justice did not justify

the arrest of such a person without a warrant. In King v Love 766 F2d 962 (1985), the Sixth Circuit found that when a judge encouraged arrest of the wrong party by deliberately misleading police officers about persons' identities, he had engaged in nonjudicial conduct. The Fifth Circuit in Brewer v Blackwell 692 F2d 387 (198) held that when act of judicial officer involve both judicial and nonjudicial conduct, unprotected behavior must be separated from shielded behavior and judges are liable for acts that were not judicial.

In Thomas v Sams 734 F2d 185 (1984) the Fifth Circuit held that a public official enjoys judicial immunity **only when acting in the course of a judicial proceeding over which he has jurisdiction.** In order for a justice of the peace to have jurisdiction over a proceeding for constructive contempt, the person must have been given due process: notice and an opportunity to obtain counsel. Petitioner Hennessey was neither given verbal or written notice, nor was he given any opportunity to contact his attorney before he was arrested in Blalack's court. **Blalack did not merely exceed his jurisdiction; he had no jurisdiction over Hennessey unless a warrant was issued.** Had Blalack issued a warrant, then he would have had jurisdiction over Hennessey in the matter of constructive contempt; but no warrant was issued. Blalack had no judicial role until he had a warrant or complaint in front of him.

The Supreme Court let stand the appeals court's opinion in Rheuark v Shaw 628 F2d 297 (1979), which held that if judicial immunity for an act is asserted, the court must determine whether the parties dealt with the judge in his judicial capacity. Petitioner Hennessey's visit to Blalack's court to request access to public records did not involve a hearing or any other judicial procedure.

This is an important distinction, because without it **persons would not be able to freely come and go in the conduct of their normal business with their government without putting their personal liberty in jeopardy,** which is not the purpose for which immunity is granted to judicial officials. One finds such jeopardy exists in third-world dictatorships, but not under the Constitution and laws of the United States of America and the State of Texas.

3. A judge has no jurisdiction to cite a citizen for direct

contempt for an act that did not occur in his presence in court.

If a judge has arrested a person for contempt and there is no warrant, jurisdiction can only be for direct contempt; in Adams v McIlhany 764 F2d 294 (1985) the court noted that "summary punishment for a constructive contempt is unconstitutional." In that case, McIlhany was careful to bring Adams into the courtroom by means of a summons and to have Adams read the contemning letter to the court in session; this gave the court jurisdiction it would otherwise not have had.

The question then arises, could the arrest of Gerard Hennessey have been for direct contempt? An act of direct contempt must be carried out in the presence of the judge while he is carrying out official judicial functions, usually in his courtroom. Because Melissa Martin sent for Bailiff Jay Helton "to arrest someone" **as Hennessey was entering Blalack's courtroom**, and because **Blalack first summoned Reporter Mike Erickson to the bench and berated and threatened him with arrest while believing him to be Hennessey**, Blalack obviously was dealing with some act he believed had been committed **before Hennessey entered the courtroom.** Indeed, when Hennessey was eventually allowed to speak and told Blalack that he had not gone past the counter in the office, Blalack ordered Bailiff Helton to release Hennessey.

In Pulliam v Allen 466 U.S. 522 (1984) the judge **had jurisdiction over the persons** who were unlawfully incarcerated for failure to post bond, their having been brought before the judge on a judicial matter with full due process. Even in the extreme and controversial case of Waco v. Mireles 112S.Ct. 286 (1991), the judge ordered the forcible arrest of an attorney **in a matter over which he had jurisdiction**, having placed the attorney's name on the docket call for that day.

Gerard Henne ey was not summoned into Blalack's court on a judicial matter before the court; he instead merely went into the courtroom seeking access to public records, an **administrative matter under the Texas Open Records Act.** Unknown to Hennessey, Melissa Martin had already taken steps to have him arrested.

Furthermore, it is obvious that Blalack realized he had falsely arrested Gerard Hennessey because as soon as Hennessey departed, he instructed his staff to make false statements about Hennessey's conduct in his courtroom to justify a direct contempt citation. There can be no other reason why he would perjure himself and suborn perjury in such a way.

In Slavin v Curry 574 F2d 1256 (1978) , the Fifth Circuit held that before dismissing a plaintiff's claims on the ground of either absolute or qualified immunity, a hearing is generally necessary to develop the facts that bear on what the scope of authority was and on whether the acts complained of fell within that authority. Petitioners claim that they should be given an opportunity to present the facts, as they did to the Lubbock Grand Jury in December 1992 and January 1993, and at the May 9-12, 1994 trial, so that a jury may determine whether Hennessey's arrest was for an act committed in court. Petitioner Linda Ann Vega's claim against Blalack for unlawfully detaining her and her family in January 1990 for failure to pay an excessive truancy fine rests on the same question.

This question is the main point at issue in this case; because it has already been determined in their favor by two finders of fact, Petitioners request the Supreme Court to hear their argument that their complaint against Blalack should not be dismissed until this issue is resolved.

4. To avoid civil liability when arresting a person for direct contempt, a Texas judge must issue contempt and commitment orders

In Ex parte Cadena (App. 13 Dist. 1991) 811 S.W.2d 725 a Texas appeal court found that a person may not be imprisoned for contempt without both written order of contempt and written order of commitment; **arrest without written commitment made for purpose of enforcing contempt judgment is illegal restraint from which prisoner is entitled to relief.** As the necessary orders associated with the detention of Petitioners Hennessey and Vega do not exist, Blalack is liable to them for §1983 damages for false arrest.

5. When a judge engages in criminal acts such as perjury and suborning of perjury in order to facilitate and protect a longstanding practice of civil rights violations perpetrated from the bench, there is no "public good" reason for granting immunity for his wrongful and aberrational judicial acts.

Committing the crime of perjury and the suborning thereof can be done by anybody; there is no way that it involves judicial discretion. Perjury, conspiracy to commit perjury and suborning perjury with the clear intent of obstructing an official investigation so as to protect and facilitate a longstanding and profitable practice of constitutional and civil rights violations is not merely a non-judicial act; it negates rights and immunities normally accorded to public officials. **There is no "public good" rationale in granting immunity to public officials who conduct the business of their public office like third-world thugs and who use judicial office for purposes of intimidation, extortion and subjugation of minorities and the poor.**

Petitioners claim that when civil rights violations and criminal acts such as perjury that were deliberately committed to avoid criminal liability for those violations take place over an extended period of time and harm as many citizens as L. J. Blalack did, the cloak of judicial immunity should be stripped away from him and his associates. In Braatelien v United States 147 F2d 888 (1945), the Eighth Circuit held that "Judicial title does not render its holder immune to crime even when committed behind the shield of judicial office." Petitioners assert that judicial immunity should be denied when the judge's behavior is highly aberrational, as the Ninth Circuit did in Gregory v Thompson 500 F2d 59 (1982).

6. Judicial immunity is not unlimited

When a person is brought into the court for some purpose other than normal judicial business, a judge can be held liable for false arrest, as in the case of a street vendor who sold a judge a "putrid" cup of coffee Zarcone v Perry 572 F.2d 52 (1978). The Second Circuit upheld an award for damages against the judge, who had the vendor brought in handcuffs to his chambers where the judge berated and threatened the vendor.

Immunity can also be denied when a judge completely ignores or abuses the arrest processes clearly set forth in the constitutions and laws of the United States and the individual states. In Hoppe v Klapperich 28 N.W.2d (1947) judicial immunity was denied where a judge issued an arrest warrant without a sworn complaint as required by law. In Utley v City of Independence 402 P2d 91 (1965) the court refused to grant immunity from civil actions for abuse of process.

The District Court itself found that Hennessey had not appeared before Blalack in his judicial capacity, "In fact (Gerard Hennessey) did not appear before Justice of the Peace Blalack as a party to a case in his court." The Seventh Circuit held in Harris v Harvey 605 F2d 330 (1979) that a judge was not entitled to judicial immunity under the Civil Rights Act for defamatory acts that were not part of his judicial function, and that he was nevertheless acting under color of state law when he carried out injurious defamatory acts that thus made him liable for damages under §1983. The Seventh Circuit also found that "the doctrine of judicial immunity does not require the exclusion of judicial acts from evidence, but merely protects a judge from liability for those acts." **Thus discovery can and should be compelled before dismissal.**

D. Procedural errors prevent dismissal of complaint against J. David Nelson.

On April 8, 1993, J. David Nelson filed his Affidavit in Support of his Motion to Dismiss and his Affidavit in support of his Motion for Judgment on the Pleadings and in the alternative Motion for Summary Judgment filed on April 18, 1994. On May 2, 1994, immediately before the May 9-12 trial and **eight days before Petitioners received a computer list of Nelson's cases from Lubbock County they had requested almost a year before,** the District Court dismissed Petitioners' complaint against Nelson **on the pleadings**]Doc234]. Petitioners request the Supreme Court to determine whether the Fifth Circuit Court of Appeals was in error when it affirmed this dismissal, for the following reasons:

1. Dismissal on the pleadings cannot be granted once defendant has filed material outside the pleadings.

Once material outside the pleadings such as a defendant's affidavit has been filed with the Court, it cannot grant a Motion for Judgment on the Pleadings Tuley v Heyd 482 F2d 590 (1973) and Triplett v Heckler 767 F2d 210 (1985).

2. Adequate discovery is needed before summary judgment may be granted.

The court denied Petitioners' discovery requests, while at the same time imposing extraordinary discovery on Petitioner Hennessey, including ordering a deposition just days before the May 9-12 trial for which Petitioner Hennessey, acting pro se, had to prepare on his own.

Relevant evidence was withheld from Petitioners by co-defendant Lubbock County until **after** Petitioners' complaint against Nelson was dismissed. This evidence, a listing of Lubbock County's computer records of all Nelson's cases, shows that all mention of the Suter case files is now missing from the official county record. In the Suter case files, particularly in Suter v Edwards on which a judgment was rendered, is evidence that Nelson violated the Federal Fair Debt Collection Practices Act. This evidence explains why in 1989 Nelson strenuously objected to court clerks when Petitioner Hennessey requested access to the Suter case files.

3. Discoverable evidence withheld by co-defendant Lubbock County until after dismissal of complaint against Nelson explains the odd circumstances of Hennessey's false arrest by Blalack

Listening to the tape of the April 9, 1991 incident in Blalack's office, it is difficult to fathom the reason why Melissa Martin suddenly flew at Petitioner Hennessey in such a rage, and why she orchestrated his arrest in Blalack's court by summoning Bailiff Jay Helton "to arrest someone" as Hennessey unknowingly entered Blalack's court to request access to the Suter records. Petitioner Hennessey was stunned by Blalack's outbursts, first at Reporter Mike Erickson whom Blalack has misidentified as Hennessey, and then Hennessey himself, whom Blalack also arrested.

The reason becomes clearer upon examination of Blalack's 1988 election campaign fund report--a discoverable document which only became available from co-defendant Lubbock County to Petitioners after May 10, 1994. J. David Nelson, his wife and his law partner were the principal contributors to that fund. Blalack was well known for his intimidation--including arrest--of political opponents such as Carlos Leal Leal v Blalack and his misuse of office to support his associates such as Ralph Erdman as well as Melissa Martin's practice of providing false statements to assist Blalack in this effort Farmer et al v Sherrod et al.

Petitioners request the Supreme Court to determine whether the Fifth Circuit Court of Appeals erred in affirming dismissal of their complaint against Nelson, whose interests were sufficiently associated with those of Blalack to provide a nexus for one aspect of the alleged civil rights conspiracy.

4. The Fifth Circuit was in error in dealing only with Nelson's 1989 misconduct.

Although two years is the statute of limitations for a simple tort, it is ten years for involvement in a civil rights conspiracy. A person need only commit **one act in support of the conspiracy,** which need not be unlawful for him to become a participant in a conspiracy. Petitioners assert that Nelson's generous election fund contribution is that one act. Thereafter he is deemed to remain active in the conspiracy unless he takes some obvious action to disassociate himself from the conspiracy. Once the 1988 election fund contribution is factored in with Nelson's 1989 outburst demanding that court clerks not allow Hennessey to examine the Suter case files and Blalack's custody of the Suter case files, the reason for Hennessey's false arrest becomes much clearer, especially as the arrest did have the desired effect: damage control with regard to Nelson's violation of the Federal Fair Debt Collection Practices Act.

On April 9, 1991, Petitioner Hennessey tape recorded Melissa Martin's sudden, loud and abusive outburst in response to his request for access to the Suter case records. Even Hennessey's attorney Sam Ogan, who met with Blalack the following day, never was allowed to examine the Suter case files, and by the time

Texas Ranger Jim Mull did so in December 1992, relevant documents Suter v Edwards had already disappeared from the file.

Petitioners claim that L. J. Blalack and Melissa Martin furthered J. David Nelson's interests when they arrested Petitioner Hennessey and so intimidated him that he abandoned his request for access to the Suter files, leaving him without adequate documents to pursue the matter of Nelson's violation of the Fair Debt Collection Practices Act in the mediation meeting the following week. Nor did Hennessey's attorney Sam Ogan's personal request to Blalack for access to the Suter case files on April 10, 1991, fare any better.

Co-defendant Lubbock County, whose actions and inactions were found by the May 9-12, 1994 trial jury to have been the proximate cause of Petitioner Hennessey's false arrest, is also an alleged co-conspirator. In June 1993 Petitioner Hennessey filed a Texas Open Records request for a computer list of all J. David Nelson's cases with Lubbock County, which refused to provide the list until May 11, 1994, **one week after** the U. S. District Court had dismissed Petitioner's complaint on the pleadings. This refusal was of considerable assistance to Nelson. There is no mention of the Suter cases in the listing, indicating that these records have been removed from the County's computer. Other previous, concurrent and subsequent records appear in the listing.

E. Petitioners request reconsideration of their RICO claim in view of the March 16, 1995, decision of the Texas Court of Criminal Appeals.

Petitioners also request the Supreme Court to review the Fifth Circuit's opinion that instruction by Blalack of his staff to prepare, execute, swear and notarize statements they knew were false was harmless "coaching" of witnesses. Petitioners claim that Blalack suborned perjury and that he conspired with them to commit perjury. The Texas Court of Appeals, in affirming Melissa Martin's perjury conviction for her false statement, specifically held that Blalack had instructed her to prepare the statement and told her what to write, and that by acquiescing her crime became choate. A copy of this opinion appears in the Appendix.

A co-conspirator is liable for harm done by a conspiracy if found to have carried out at least ONE participatory act in support of the corrupt conspiracy U.S. v Hobson 686 F2d 628. Massey v Farnsworth Civ. App. 353 SW 2d. 262,271 (1961) cited 15A CJS 653 §17: "Conspirators are jointly and severally liable for all damage resulting from the conspiracy, each being responsible for the acts of the other in furthering the common design." Intentional efforts to obstruct an official State of Texas investigation are prohibited in Texas Penal Code Title 18 §1510. In U.S. v Hubbard 474 F.Supp.64 (1979) perjury charges were found to be relevant to conspiracy to avoid detection. Another instance of possible perjury by Melissa Martin was described by Federal 5th Circuit District Judge Mary Lou Robinson in her Opinion dated March 4, 1993 in re Farmer, Hubbard, and Kelly v. Sherrod, Ware, et al styled as 2:93-CV-0017-J.

Because of the shadowy nature of a criminal conspiracy, involvement of parties usually has to be inferred from their actions and those of others also known or suspected to participate in the conspiracy. But in this case, most of the conspiracy's criminal acts have been admitted by their perpetrators in sworn statements that were submitted with Petitioners' Original Complaint in this action.

Because the identical crimes of perjury were committed by Julie Martin and RoseMarie Chivers on the same day in the same office for the same purpose, Petitioners assert that each of these defendants thereby committed the requisite **act in furtherance of the conspiracy** that made them participants therein. These acts also meet the criterion for an **intentionally criminal act** by the conspiracy. On December 2, 1992, Melissa Martin stated to Texas Ranger Jim Mull that she had made many other similar false tatement and a ked him to help her retrieve them from Blalack thi provide the requi ite evidence of **cont nu ty** of the con piracy over a period of years.

Evidence from court records and other documents show that Blalack had a practice of arresting persons unable to pay the excessive fines and fees he levied with clear discrimination against minorities and the poor (in one case, an $18,000 truancy fine against an Hispanic family). In fear of their personal safety, most such citizens paid the fines and said nothing. Melissa Martin, who

worked for Blalack for more than ten years, was found by Judge Marylou Robinson to have made a false statement on his behalf to the court in Farmer et al v Sherrod et al. These matters are still under investigation by the Texas Attorney General.

Petitioners assert that, given the evidence they filed with the Court concerning the pattern and practice of violation of civil rights by Blalack and criminal conspiracy to protect him from investigation, the Fifth Circuit Court of Appeals erred in dismissing their RICO claim without first allowing discovery. Petitioners respectfully request the Court to grant them certiorari so they may present their arguments and evidence.

"The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader." Conley v Gibson 355 U.S.41,45-46 (1957).

V. HOW THE ISSUES WERE RAISED BELOW

Petitioners' complaint filed in the Northern District of Texas Lubbock District Court on April 7, 1993 as 5:93-CV-078-78-C [Document 1: Pages 1-101] arises from an alleged longstanding corrupt conspiracy among elected and appointed officials in Lubbock County in the State of Texas. Petitioners claim that L. J. Blalack, Justice of the Peace for Lubbock County Precinct 1, operated as kingpin and central state actor of the conspiracy, and that over a period of at least six years, Blalack systematically extorted excessive fines and fees from Lubbock citizens, abused them, threatened and imprisoned them for inability to pay these fines and fees on the same day; a major source of extortionate revenue was excessive (up to $18,000)[T268] fines and fees imposed on uneducated unrepresented poor minority citizens who came before Blalack under Texas Education Code §4.25: Violation of Compulsory Attendance (truancy), for issuance of "bad checks",

for traffic violations and for other Class C Misdemeanors such as Minor in Possession of Alcohol, and Failure to Display Automobile Inspection Certificate. None of these offenses is a jailable offense; all decisions of a Texas Justice of the Peace are immediately appealable to the County Court.

Petitioners also alleged that Blalack, his staff, and other Lubbock County officials protected the conspiracy by denying citizens, attorneys and members of the press access to court records, and by a practice of preparing, executing, swearing and notarizing false statements concocted to justify unlawful conduct and violation of civil rights. They submitted evidence to show that Lubbock County employees helped to collect these extorted funds, placed them in County accounts, and received personal bonuses and overtime payments from these accounts. They provided documents showing that numerous attempts by Lubbock citizens, attorneys, other judges, and members of the press over at least six years to bring Blalack's corrupt violation of civil and constitutional rights under control were met with flat refusals to investigate and dismissals of legitimate complaints without investigation by state officials Special Prosecutor John Neal, his Investigator Doug Greathouse, and particularly by Texas Judicial Conduct Commission Chief Executive Officer Robert Flowers who had received, refused to investigate, and dismissed at least two dozen serious complaints about L. J. Blalack's conduct in the years 1986 to 1992.

1. Indictment of L. J. Blalack and Melissa Martin. On January 8, 1993, the Lubbock County Grand Jury indicted Defendant Blalack on two counts of official oppression (one count on the public abuse and unlawful arrest of Gerard Hennessey on April 9, 1991 and one count on the public abuse and unlawful arrest of Linda Ann Vega and her family on January 3, 1990), one count of perjury (based on Blalack's sworn testimony to the December 1992 Grand Jury claiming that Plaintiff Hennessey's conduct had merited arrest for contempt during the April 9, 1991 incident involving abuse and arrest of Plaintiff Hennessey--who had come to his court to obtain another judge's records), and one count of official misconduct (for personal use of government property). The Grand Jury also indicted Defendant Melissa Martin on one count of perjury (for preparing and swearing a false statement about the April 9, 1991 incident and for notarizing other statements she

knew to be false) [Doc1:Pp93-97]. By the first week in April 1993, Blalack had neither been arrested nor arraigned by Lubbock County officials.

2. Original Federal Civil Rights complaint and service. On April 7, 1993, Plaintiff Gerard Hennessey filed his Original Complaint against Defendant L. J. Blalack and others, claiming damages under 42§1981-3 for tortious public humiliation by a public employee, false imprisonment, denial of access to public records, denial of due process, denial of equal protection under the law; he demanded costs and treble damages under RICO on grounds of a corrupt conspiracy to violate civil rights of Plaintiff and others. The action was filed against L. J. Blalack, J. David Nelson, John Neal, Doug Greathouse, Robert Flowers, Melissa Martin, Julie Martin, Patsy Summers, Rose Marie Chivers, Lyn Duval, and Diana Holloman [Doc1:Pp1-101].

3. Responses to the Complaint. The chronology and nature of responses to the Original Complaint are listed in the Appendix.

4. Settlement Conference. On August 12, 1993, the Court issued its Scheduling Order [Doc75:Pp514-5] requiring parties to meet to discuss settlement of the Action, in response to which Plaintiff Gerard Hennessey accompanied by his wife, met with Defendant Blalack accompanied by his wife, and Defendants' Counsel Ratliff, Thompson and Gresham, Gorsuch, Jones, Thompson, Joanne Bernal; excluded by objection of parties were Stanley Kaster, Linda Ann Vega, Mark Welbourn, and Ratliff's law clerk. Contrary to specific instructions in the Court's order, no Defendants other than Blalack attended this meeting. Plaintiff included this informaton in his Report on the Conference filed August 25, 1993 [Doc91:P766-7]; the Court took no action on this failure to follow its orders.

5. Application for Certification of Action as a Class Action. Plaintiff obtained a copy of an LISD memorandum stating that in 1987 L. J. Blalack had met with LISD officials and agreed with them to hear all Lubbock truancy cases [Doc84:Pp638-9] in knowing violation of jurisdiction based on parent's residence requirement stipulated in Texas Education Statute §4.25 [Doc52:

P373]. From a report from Mark Welbourn [Doc84:Pp642-677], who was employed by Plaintiff to examine Defendant Blalack's records, Plaintiff Hennessey became aware of the longstanding and pervasive nature of Defendant Blalack's misconduct and violation of U.S. and Texas Constitutional protections against lack of jurisdiction and excessive fines, as well as the extent of the financial interests of Lubbock County and Lubbock Independent School District officials in LISD truancy cases.

Because many of the persons injured in the process of these truancy cases had been subjected to the same abuses inflicted upon Plaintiff Hennessey (unlawful arrest, public abuse and denial of due process), and because the total amount of money involved in excessive fines and fees was obviously very large--possibly in excess of $1 million over five years--Plaintiff filed a Motion for Certification of the Action as a Class Action [Doc50:Pp353-360; Doc51:Pp361-370; Doc52:Pp371-394]. Mindful that the risk to the interests of other injured parties from res judicata could be increased by Plaintiffs' lack of legal expertise to pursue their interests adequately, Plaintiff Hennessey and Petitioner to Join Vega obtained an agreement from attorney Val Varley to represent them provided a 60-day continuance could be obtained. On July 26, Defendant Melissa Martin filed her Response in Opposition to Certification as a Class Action [Doc59:Pp427-434]; on July 27, Defendant L. J. Blalack filed his response [Doc62:Pp441-463]. On August 12, Class Action Certification was denied [Doc73:P512]. On August 19, Plaintiff and Petitioner to Join Linda Ann Vega re-filed their Motion for Certification [Doc83:P616] which the Court denied on September 12 or 13 (filing dates differ on Plaintiff's copy and the official court copy) with instructions not to file another application for class action certification [Doc114: Pp883-4].

6. Motion of Linda Ann Vega for Joinder. Meanwhile, on August 13, 1993, two days after her daughter Stefanie's marriage, Linda Ann Vega filed her Motion to Join herself to the Action as co-Plaintiff and LISD truancy officer Colene Fielding as co-Defendant [Doc77:Pp517-525; Doc78:Pp526]. She filed medical reports and other evidence that Stefanie--an epileptic--had been severely paddled by her school principal at exactly the time Linda Vega was testifying against Defendants Blalack and Colene Fielding and about LISD truancy

cases to the Grand Jury [Doc82:P574-5], to explain why she had not been an original co-plaintiff in the Action. On September 13, the Court denied her Motion for Joinder [Doc112:Pp880-2].

7. Discovery.

a. L. J. Blalack. On June 16, 1993, Defendant L. J. Blalack served his First set of Interrogatories and Requests for Documents on Plaintiff Gerard Hennessey [Doc105:Pp830-846], to which Plaintiff responded in part with regard to matters that covered the pending issue of certification of the action as a class action--as directed in Local Rule 10(c)--and on August 30 and applied for a protective order on September 13 [Doc90:Pp779] on his work product and for items that were available in Blalack's own court records and in Lubbock County records; Plaintiff objected to having to provide these items to Defendant due to the expense and burden involved, particularly as Defendant Blalack had previously denied Plaintiff access to court records of Bill Ross [Doc1:Pp31-32]. On October 21, the District Court filed an Order Compelling Plaintiff to Comply with Blalack's discovery requests [Doc164:P1286], which Plaintiff did within 10 days.

On July 27, 1993, Plaintiff Hennessey served his First Set of Requests for Production and First Set of Interrogatories on Defendant Blalack [Doc156:Pp1181-1208]. On August 24, 1993, Defendant Blalack filed his Objections to discovery and applied for a Protective Order [Doc90:Pp756-765]. On October 12 Plaintiff filed his Motion for Admission as True all unanswered Requests for Admission and Motion to Compel Discovery [Doc156:Pp1171-1229], which was denied on November 2 [Doc177:P1342]. On March 22, 1994, Petitioners' complaint against L. J. Blalack was dismissed by granting his Motion for Summary Judgment [Doc158,Doc224].

b. Robert Flowers. On July 16, 1993, Plaintiff Hennessey served Defendant Flowers with a Request for Production of Documents and First Set of Interrogatories [Doc80:Pp544-555] to which Flowers objected on the grounds of qualified good faith immunity, and applied to the Court for a protective order [Doc80:Pp538-542], to which Plaintiff objected on September 1 [Doc98:P789]. On September 17th the Court dismissed the

complaint against Robert Flowers [Doc125:P956] and on the same day the Court ruled his motion for protective order moot [Doc 126:P958].

c. Patsy Summers, Julie Martin, John Neal, Doug Greathouse, Rose Marie Chivers, Don McBeath and Lubbock County. On August 16, 1993, Plaintiff served the First Set of Requests for Production and First set of Interrogatories upon Defendants John Neal and Doug Greathouse [Doc85:Pp686-715] and upon Defendant Don McBeath [Doc86:716-731]. On August 20 the above defendants filed their Motion for Protection and Motion to Stay Discovery [Doc85:P678-680; Doc86:Pp681-685]. On August 25, the Court granted the Motion to Dismiss for Julie Martin and Patsy Summers [Doc93:Pp770-772], severing the complaint to 5:93-CV-221-C [Doc94:P773] and was appealed by Plaintiff on September 7 [Doc99: P800]. On September 17 discovery was ruled moot [Doc113:P881]. On August 26, the Court granted the Motion to Dismiss for Don McBeath and Lubbock County [Doc95:Pp774-5]; on September 17 discovery was ruled moot [Doc113:P881-2]. On August 30, the Court granted the Motion to Dismiss for John Neal and Doug Greathouse [Doc96:Pp777-778] and severed into 5:93-CV-226-C [Doc96:P779] on which final judgment was given.

Defendants John Neal, Doug Greathouse, Julie Martin and Patsy Summers have never filed an Answer to the Original Complaint, nor have anyone but John Neal among them submitted an affidavit to refute the complaints against them. The District Court denied all discovery requests. It also dismissed complaints against all parties, with the exception of Don McBeath and Lubbock County. This effectively prevented Petitioners from proceeding with the action on the basis of conspiracy, because all of the co-conspirators have been dismissed from the case without discovery or presentation of evidence to a trier of fact. On February 21, 1994, the District Court repealed its Local Rule 10(c) requiring discovery in class actions to proceed only as to class action issues preventing discovery on the merits until certification. Because this materially affected the outcome of this case Petitioners requested the Court to direct the District Court to vacate its orders denying discovery and to direct Defendants to participate in discovery on the merits, which the Court denied.

d. J. David Nelson. On April 8, 1993, J. David Nelson filed his Motion for Judgment on the Pleadings in reponse to Petitioners' Original Complaint, along with his supporting Affidavit. On June 23, 1993 Petitioners submitted a Texas Open Records request to Defendant Lubbock County for a computer listing of all J. David Nelson's cases in Lubbock County. On April 1994, Nelson filed his Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment. The District Court ordered Petitioner Hennessey to submit to a deposition on April 30; on May 2, 1994, the District Court granted Nelson's Motion for Judgment on the Pleadings and on May 10 Defendant Lubbock County supplied the requested computer listing.

8. Jury awarded $10,000 against McBeath and Lubbock County; their inaction was proximate cause of violation of Petitioner Hennessey's rights.

During the May 9-12 trial, Petitioner Hennessey relied greatly on newspaper clippings, the only form of documentary evidence available to him in most cases due to denial of discovery. Both Justice of the Peace Jim Hansen and Constable Gary Newburn testified that their computer access to Blalack's public court records had been blocked on orders of County Judge Don McBeath.

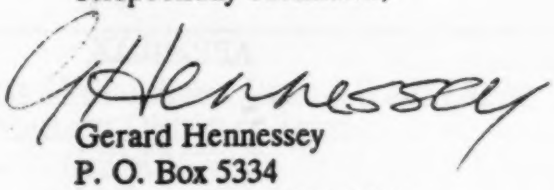
9. District Court reversed jury verdict without comment. On June 13, 1994, the District Court granted Defendants Don McBeath and Lubbock County's Motion for Judgment as a Matter of Law without comment, awarding them court costs and subsequently denying their application for attorney's fees.

VI. REASONS FOR GRANTING THE WRIT

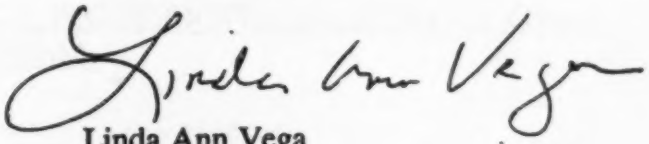
Petitioners respectfully request the Supreme Court to certify for review the opinion of the Fifth Circuit Court of Appeals, on the grounds that conflict with opinions issued by this Court, by other Courts of Appeal, by state courts of last resort, with other official finders of fact, and by themselves warrants review and possible reversal. This is particularly important in view of the excessive and extensive nature of the civil rights abuses complained of by Petitioners.

Substantial issues for the Supreme Court include whether judicial immunity attaches to arrests in which there is no warrant or other order and the facts do not support direct contempt, the effect of a longstanding criminal civil rights conspiracy on judicial immunity, whether continuous or sporadic involvement in a criminal conspiracy are needed for participation, and whether a substantial contribution to the election campaign fund of a corrupt public official--whose vigorous efforts subsequently protect and facilitate the contributor's interests--involve the contributor as a participant in the official's corrupt conspiracy.

Respectfully submitted,



Gerard Hennessey
P. O. Box 5334
Lubbock TX 79408-5334



Linda Ann Vega
616 30th Street
Lubbock TX 79404

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-10372
Summary Calendar

GERARD HENNESSEY, Plaintiff-Appellant,

LINDA ANN VEGA, Appellant,

versus

L. J. BLALACK, et al., Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas
(5:93-CV-78-C)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges. PER CURIAM:[1]

Hennessey appeals the dismissal of his RICO claims against L. J. Blalack, a former justice of the peace for Lubbock County, Texas, and other Lubbock County officials. Hennessey's complaint alleges that Lubbock County officials operated a corrupt enterprise through which excessive fines were funnelled to them in violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961-1968

[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

("RICO"). The district court entered Rule 54(b) orders dismissing most of the defendants and dismissing some of Hennessey's claims against the remaining defendants, including the RICO claim. The court subsequently entered summary judgment on the remaining claims. The court also denied Hennessey's motions to certify a class action and to disqualify the district judge. Hennessey subsequently filed numerous appeals of the district court's Rule 54(b) orders. The principal issue Hennessey raises in this appeal is whether the district court erred in dismissing the RICO claims and denying his motions.

We conclude that Hennessey's arguments in this appeal are frivolous. A frivolous appeal is an appeal in which "the result is obvious or the arguments are wholly without merit." **Coghlan v. Starkey**, 852 F.2d 806, 811 (5th Cir. 1988). The arguments Hennessey makes in this appeal are those we resolved in a previous unpublished decision, **Hennessey v. Blalack**, Nos. 93-1808, **etc.** (5th Cir. Aug. 30, 1994) ("**Hennessey I**"). In **Hennessey I** we affirmed the district court's orders at issue in the present appeal. Under the "law of the case" doctrine, Hennessey's arguments raising the same issues that we have already resolved in a previous decision are foreclosed. **Chevron U.S.A., v. Traillour Oil Co.,** 987 F.2d 1138, 1150 (5th Cir. 1993). Hennessey's arguments are thus wholly without merit. Accordingly, we DISMISS his appeal and, in view of the large number of Hennessey's appeals still pending in this court, we take this occasion to warn Hennessey that any additional frivolous appeals filed by him or on his behalf will be met with an appropriate sanction under Federal Rule of Appellate Procedure 38. To avoid sanctions, Hennessey should review all of his pending appeals to ensure that they do not raise arguments already resolved by this court.

DISMISSED.

U.S. COURT OF APPEALS
FILED
FEB 02 1995
CHARLES R. FULBRUGE III, CLERK

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-10373
Summary Calendar

GERARD HENNESSEY, Plaintiff-Appellant
LINDA ANN VEGA, Appellant,

versus

L. J. BLALACK, et al., Defendants,
L. J. BLALACK, Defendant-Appellee.

****

GERARD HENNESSEY, Plaintiff-Appellant,
L. J. BLALACK, et al., Defendant-Appellee.

Appeals from the United States District Court
for the Northern District of Texas
(5:93-CV-78-C/5:94-CV-074-C)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:[2]

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[2] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Hennessey appeals the dismissal of his **pro se** § 1983 complaint against L. J. Blalack, a former justice of the peace for Lubbock County, Texas. We affirm.

I.

Hennessey's claims against Blalack arose from an altercation occurring in Blalack's courtroom. Hennessey sought access to complaints filed in Blalack's court by a local attorney. After a heated exchange between Hennessey and Blalack, Blalack charged Hennessey with contempt and requested a deputy sheriff to place him in custody. Before Blalack was escorted out of the courtroom, however, Blalack withdrew the contempt citation and instructed the bailiff to release Hennessey. Blalack later instructed his court clerks to prepare affidavits stating that Hennessey had been loud and abusive. Several clerks subsequently informed law enforcement officers that Blalack "coached" their affidavits. Blalack was later indicted for perjury and false arrest.

Hennessey's § 1983 complaint alleges that Blalack's contempt citation violated Hennessey's constitutional rights and that Blalack conspired with his court clerks to deprive him of his constitutional rights by preparing false and defamatory affidavits. Hennessey's complaint further alleges that other state and Lubbock County officials conspired to prevent him from successfully petitioning for Blalack's removal from office and that Lubbock County officials were operating enterprise through which excessive fines were funnelled to them in violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961-1968 (RICO).

The district court entered Rule 54(b) orders dismissing most of the defendants and dismissing some of Hennessey's claims against the remaining defendants, including Hennessey's RICO claim. The district court then granted summary judgment against Hennessey on the remaining claims. Hennessey filed numerous appeals of the district court's Rule 54(b) orders dismissing claims and defendants. In a previous unpublished decision, **Hennessey v. Blalack**, Nos. 93-1808, **etc.** (5th Cir. Aug. 30, 1994) ("**Hennessey I**"), we affirmed the

district court's dismissal of the claims against the court clerks and county officials. We also affirmed the district court's dismissal of Hennessey's RICO claim. The primary issue raised by the present appeal is whether the district court erred in granting Blalack summary judgment on the basis of judicial immunity.

II.

A.

Hennessey first contends that the district court erred in concluding that Blalack was entitled to judicial immunity for the contempt citation. Judges presiding over courts of general jurisdiction are absolutely immune from damage suits for "judicial acts" provided that they do not act in "clear absence of all jurisdiction." **Stump v. Sparkman**, 435 U.S. 349, 356-57 (1978). Judicial immunity extends to justices of the peace even though they do not exercise "general jurisdiction." **Brewer v. Blackwell**, 692 F.2d 387, 396 (5th Cir. 1982). Whether an act is judicial in nature turns on following factors: (1) whether the precise act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces; (3) whether the controversy centered around a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity. **Malina v. Gonzales,** 994 F.2d 1121, 1124 (5th Cir. 1993).

Hennessey first argues that Blalack is not entitled to judicial immunity because the contempt citation was not judicial

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Hennessey's brief also discusses many of the claims of error decided by this court in **Hennessey I**, including Hennessey's claims that (1) the district court erred by denying his RICO claim before discovery had been completed, (2) the district court erred in denying his motion for class certification, and (3) the district court erred in refusing to allow the joinder of claims brought by Linda Ann Vega. To the extent that Hennessey seeks to reargue these claims, our decision in **Hennessey I** constitutes the "law of the case." Consequently, we need not reexamine Hennessey's arguments. **See Chevron U.S.A., Inc. v. Traillour Oil Co.**, 987 F.2d 1138, 1150 (5th Cir. 1993).

in nature. According to Hennessey, he did not appear before Blalack on a judicial matter and was not a party to any of the cases pending in Blalack's court. In response, Blalack argues that contempt citations are inherently judicial because they implicate a judge's power to supervise and maintain order in the courtroom.

We agree that Blalack's contempt citation was a judicial act under the criteria set out in **Malina**. First, contempt citations are "normal judicial functions." **Malina**, 994 F.2d 1121. Moreover, the incidents precipitating the contempt citation occurred in Blalack's courtroom and involved Hennessey's attempt to obtain information concerning several complaints filed in Blalack's court. Finally, Hennessey's contention that the contempt citation did not arise out of a visit to Blalack in his official capacity is meritless. As justice of the peace, Blalack was officially responsible for maintaining the records of the court. **See Tex. Gov't Code Ann.** § 27.004 (Vernon 1988). Consequently, Hennessey's appearance before Blalack in his courtroom should have placed Hennessey on notice that he was appearing before Blalack in his official capacity as justice of the peace. **See Harper v. Merckle**, 638 F.2d 848, 859 (5th Cir.), **cert. denied**, 454 U.S. 816 (1981) (concluding that the parties' expectations should be considered in deciding whether an appearance before a judge is in the judge's official capacity).

Hennessey also argues that Blalack lacked jurisdiction to issue the contempt citation because he did not provide Hennessey with notice or hold a hearing before citing him with contempt. This argument is similarly without merit. In **Ex parte Krupps**, 712 S.W. 2d 144, 146-48 (Tex. Crim. App.), **cert. denied, Krupps v. Texas**, 479 U.S. 1102 (1987), the Texas Court of Criminal Appeals held that a contempt citation based on actions occurring in the presence of the court does not require prior notice or a hearing. Accordingly, neither notice nor a hearing was required under Texas law because the events leading up to the contempt citation occurred in Blalack's presence.

Finally, Hennessey contends that the district court erred in granting summary judgment on the basis of Blalack's sworn affidavit because Blalack was indicted for perjury. Hennessey

also alleges that Blalack's affidavit "conflicts substantially" with the affidavits offered by the other defendants. This claim is similarly without merit. The facts necessary to decide whether Blalack is entitled to judicial immunity are largely undisputed and appear in the allegations of Hennessey's complaint. While Hennessey asserts that Blalack's affidavit conflicts with the other affidavits, he fails to specifically identify any disputed facts relevant to deciding whether judicial immunity applies to Blalack's actions. "Factual disputes that are irrelevant or unnecessary will not be counted" in deciding whether the parties' affidavits create a genuine issue of material fact. **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 248 (1986). Therefore, we conclude that the district court did not err in granting summary judgment as to the contempt citation based on judicial immunity.

B.

Hennessey also contends that the district court erred in granting summary judgment without considering whether Blalack was entitled to judicial immunity for ordering his court staff to prepare allegedly false and defamatory affidavits. Hennessey contends that Blalack is not entitled to immunity because the preparation of the affidavits was not a "judicial act." Rather, Hennessey alleges that Blalack ordered his staff to prepare the affidavits to thwart a state investigation of his conduct.

We need not decide whether Blalack is entitled to judicial immunity for his actions because Hennessey fails to show that the preparation of the affidavits deprived him of a recognized liberty or property interest within the purview of the Fourteenth Amendment. **Doe v. Taylor Indep. School Dist.**, 15 F.3d 443, 450 (5th Cir.,) **cert. denied**, ___U.S.---, 115 S. Ct. 70 (1994). Hennessey argues that the affidavits humiliated him and defamed his reputation, and that Blalack used the affidavits to obstruct an official state investigation. However, the "invasion of an interest in reputation alone is insufficient to establish § 1983 liability because a damaged reputation, apart from injury to a more tangible interest such as loss of

employment, does not implicate any 'liberty' or 'property' rights sufficient to invoke due process." **Geter v. Fortenberry**, 849 F.2d 1550, 1556 (5th Cir. 1988) (citation omitted).

Hennessey does not allege that Blalack used the affidavits to diminish his employment opportunities or to harm any other tangible interest. Furthermore, while the use of perjured testimony to facilitate an adjudication of guilt may give rise to a claim under § 1983, Hennessey does not allege that Blalack used the affidavits to facilitate an adjudication of guilt. **See Johnson v. Odom**, 910 F.2d 1273, 1277 (5th Cir.), **cert. denied**, 499 U.S. 936 (1991). We conclude, therefore, that the district court did not err in granting Blalack summary judgment.

AFFIRMED.

U.S. COURT OF APPEALS
FILED
JAN 26 1995
CHARLES R. FULBRUGE III, CLERK

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-10530
Summary Calendar

GERARD HENNESSEY,

Plaintiff-Appellant,

LINDA ANN VEGA,

Appellant,

VERSUS

L. J. BLALACK, et al.,

Defendants,

J. DAVID NELSON,

Defendant-Appellee.

****

GERARD HENNESSEY,

Plaintiff-Appellant,

VERSUS

J. DAVID NELSON,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Texas
(5:93-CV-78-C & 5:94-CV-112)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges. PER CURIAM:

Gerard Hennessey appeals the dismissal of his § 1983 and RICO claims against J. David Nelson. We affirm.

I.

Hennessey's claims against J. David Nelson, a Lubbock County, Texas attorney, center on Nelson's efforts to collect various debts from Hennessey's daughter on behalf of a local retailer. Hennessey suspected that Nelson's collection efforts violated the Fair Debt Collection Practices Act ("FDCPA"), and that they were part of a larger racketeering enterprise operated by Nelson and Lubbock County officials. In October 1989, Hennessey sought court records from Bill Ross, a Lubbock County justice of the peace, documenting Nelson's debt collection practices. Although Nelson objected to Hennessey's request, Ross released the documents.

In April 1991, Hennessey sought additional court records from L.J. Blalack, another Lubbock County justice of the peace. After a heated exchange between Hennessey and Blalack, Blalack charged Hennessey with contempt and requested a deputy sheriff to place him in custody. Before Hennessey was escorted out of the courtroom, however, Blalack withdrew the contempt citation and instructed the bailiff to release him.

Hennessey responded by filing a § 1983 complaint against Blalack, Blalack's court personnel, Nelson, and

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Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

numerous other Lubbock County officials alleging that they violated his constitutional rights. Hennessey further alleged that these defendants operated a corrupt enterprise designed to extort excessive fines and engage in illegal debt collection practices in violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961-1968 ("RICO").

The district court entered Rule 54(b) orders dismissing most of the defendants and dismissing some of Hennessey's claims against the remaining defendants, including Hennessey's RICO claim against Nelson and the county officials. The district court then granted summary judgment against Hennessey on the remaining claims. In the present appeal, Hennessey challenges the district court's dismissal of his § 1983, RICO, and pendent state law claims against Nelson. He also challenges the district court's denial of his motion to certify a class action on behalf of county residents harmed by the defendant's alleged RICO violations.

II.

A.

Hennessey first contends that the district court erred by dismissing his § 1983 claims against Nelson. Hennessey alleges two grounds for his § 1983 claims against Nelson. First, Hennessey alleges that Nelson interfered with his constitutional right of access to public records by objecting to his request for court documents from Judge Ross. Second, Hennessey alleges that Nelson made disparaging remarks about him to other attorneys in an effort to prevent him from obtaining legal representation for his daughter. The district court concluded that Hennessey failed to assert a violation of any constitutionally protected right and dismissed his § 1983 claims. The court also concluded that Hennessey's § 1983 claims are barred under Texas' two-year statute of limitations for personal injury claims.

Our review of the record persuades us that Hennessey's § 1983 claims against Nelson are barred by Texas' two-year statute of limitations. In determining whether a § 1983 claim is

barred by the statute of limitations, federal courts refer to the forum state's general personal injury limitations period. **Ali v. Higgs**, 892 F.2d 438, 439 (5th cir. 1990). Texas' applicable limitations period for personal injury claims is two years. Tex.Civ.Prac. & Rem.Code Ann. § 16.003(a)(Vernon 1986). Hennessey filed his § 1983 claims against Nelson in April 1993. However, the incidents alleged in Hennessey's § 1983 complaint occurred more than two years before he filed his complaint. Nelson's attempt to prevent Hennessey from obtaining records from Judge Ross occurred in 1989. The disparaging remarks cited in Hennessey's complaint similarly occurred in 1989.
[5] Because the record does not reveal any basis for tolling the statute of limitations, Hennessey's § 1983 claims against Nelson are barred.

B.

Hennessey next contends that the district court erred by dismissing his RICO claim against Nelson and denying his motion to certify a class action.
[6] Both arguments are without merit. We resolved these issues in a previous unpublished decision, **Hennessey v. Blalack**, Nos. 93-1808, **etc.** (5th Cir. Aug. 30, 1994) (**"Hennessey I"**). In **Hennessey I**, we concluded that Hennessey lacked standing to sue under RICO and affirmed the district court's dismissal of his claims. We also affirmed the district court's denial of

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5 The only other incident involving Hennessey's attempt to obtain public records is the 1991 altercation involving Judge Blalack. However, Hennessey fails to allege any facts connecting Nelson with the altercation. Hennessey filed a separate § 1983 action against Judge Blalack alleging that the judge barred his access to public records.

6 Hennessey alleges that Nelson participated in the county officials' RICO enterprise by pursuing unlawful debt collection practices. Hennessey cites alleged violations of the FDCPA and the Hobbs Act as examples of Nelson's racketeering activities.

Hennessey's motion to certify a class action. Under the "law of the case" doctrine, Hennessey cannot raise arguments that we have already resolved in a previous decision. **Chevron U.S.A., v. Traillour Oil Co.,** 987 F.2d 1138, 1150 (5th Cir. 1993).

C.

Finally, Hennessey contends that the district court erred by not retaining supplemental jurisdiction over his state law claims against Nelson. This argument is similarly without merit. Under 18 U.S.C. § 1367(3), a district court may dismiss pendent state law claims if the court has dismissed "all claims over which it has original jurisdiction." District courts enjoy wide discretion in dismissing pendent state law claims under § 1367(3). **Noble v. White,** 996 F.2d 797, 799 (5th Cir. 1993). Hennessey fails to show that the district court's dismissal of his state law claims wasted judicial resources or otherwise prejudiced him. In fact, the court's dismissal occurred at an early stage in the proceedings before either party had engaged in extensive discovery. The district court did not, therefore, abuse its discretion by dismissing Hennessey's pendent state law claims.

III.

For the reasons stated above, we AFFIRM the district court's dismissal of Hennessey's § 1983 and RICO claims against Nelson. Nelson also filed a motion to strike references in Hennessey's brief to facts not in the record. Specifically, Nelson objects to Hennessey's references to campaign contributions that Nelson made to L.J. Blalack. References in a party's brief to matters outside the record may be stricken. **Holmberg v. Baxter Healthcare Corp.,** 901 F.2d 1383, 1392 n.4 (7th Cir. 1990). Accordingly, we GRANT Nelson's motion to strike Hennessey's references to Nelson's campaign contributions.

AFFIRMED; Motion Granted.

U.S. COURT OF APPEALS

FILED, MARCH 2, 1995,

NO. 07-94-0199-CR

IN THE COURT OF APPEALS

FOR THE SEVENTH DISTRICT OF TEXAS

AT AMARILLO

PANEL D

MARCH 16, 1995

MELISSA MARTIN, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE COUNTY COURT AT LAW #1 COURT OF LUBBOCK COUNTY; N0. 93-493,663; HONORABLE WILLIAM C. DODSON, JUDGE

Before REYNOLDS, C.J., and BOYD and QUINN, JJ.

The Appellant, Melissa Martin, asks whether a written statement lacking the elements of an affidavit may support a perjury conviction. We answer yes and affirm.

FACTS

On January 8, 1993, the grand jury for the 365th Judicial District indicted the Appellant for intentionally and knowingly making two inconsistent statements under oath. The first, written on April 9, 1991, stated that a Gerard Hennessey was "belligerent and argumentative" during a meeting with Justice of the Peace, L.J. Blalack while the second, executed on December 3, 1992, explained that Hennessey was "not loud, abusive or rude but was irate...over bearing [sic] pushy and...arrogant..."

Blalack had apparently had a set-to with Hennessey, held the layman in contempt, and then rescinded the edict. Worried that Hennessey may nevertheless file a grievance, the Justice of the Peace requested the Appellant, who worked in Blalack's office, and other clerks to compile written statements memorializing their perception of the event. He further directed them to incorporate into the documents adjective describing Hennessey as "argumentative, belligerent, [and] abusive."

The Appellant acquiesced. Upon completing hers, she signed the document. Debra Chambers, a notary public, affixed her name to the right of the Appellant's then stamped her seal of office within the lower right-hand margin. Absent, however, were a jurat or other written words declaring that the Appellant uttered the statement under oath. Because of this, she moved to suppress the document as irrelevant. The trial court denied the motion.

When the cause eventually came for trial, the parties stipulated that:

Debra Chambers would testify that she made me swear that the statement notarized on April 9, 1191, was true, accurate and correct. Furthermore, that Debra Chambers would state that she is a licensed notary for the State of Texas, and

Jim Mull, Texas Ranger, would testify that I gave him a sworn [written] statement [the second statement] stating that my statement of April 9, 1991 was not absolutely the truth.

The trial court found this sufficient to convict and assessed her community supervision and deferred adjudication.

POINTS OF ERROR

In four points of error, the Appellant contends that in situations where perjury is founded upon a written statement, the statement must be nothing less that an affidavit. Since the April 9th statement was not an affidavit it was irrelevant and inadmissible. We disagree and, before explaining why, note that which no one disputes.

First, all agree that the Appellant wrote the April 9th statement. All agree that the December 3rd writing, which met the formalities of an affidavit, contradicted portions of the April 9th document. Furthermore, no one suggests that the items contradicted were expressions of opinion rather than the fact. That Chambers was a notary is also uncontroverted. With this said, we turn to the penultimate issues which involve the interpretation of §37.02 of the Texas Penal Code.

a. Standard of Review

Issues of statutory construction are questions of law. *Johnson v. City of Fort Worth*, 774 S.W.2d 653, 656 (Tex. 1989). Thus, the interpretation accorded by the lower court is freely reviewable. Yet, there are several basic rules to which all must adhere. The first requires the court to derive the legislative intent underlying the statute and to interpret same commensurate with that intent. *Leonard v. State*, 767 S.W.2d 171, 176(Tex. App.–Dallas 1988) *affirmed sub. nom, Schalk v. State*, 823 S.W.2d 633 (Tex. Crim. App, 1991). The next rule compels the court to read the provision as written without expanding, inserting or deleting words. *Id.; State v. Hatten*, 600 S.W.2d 828, 830 (Tex. Crim. App. 1980). Finally, should material terms lack express statutory definition, the reviewing body must accord those words their plain meaning. *Casillas v. state*, 733 S.W.2d 158, 163(Tex. Crim. App. 1986).

b. What's a Statement

One commits perjury upon making a false statement under oath or swearing to the truth of a false statement previously made when the statement is required or authorized by law to be made under oath. *Tex. Pen. Code Ann* §37.02(a)(1) (Vernon 1994). Furthermore the individual must act with the intent to deceive and know the meaning of the statement uttered. *Id.* at §37.02(a).

Adopted in 1974, §37.02 combined the district crimes of perjury and false swearing. *Tex. Pen Code Ann.* §37.04, Practice Commentary (Vernon 1974). Though virtually identical, they deviated in one important respect, the motivation for the oath. *Tex. Pen. Code* art. 302 & 310 (Vernon 1974) (repealed); *City of San Antonio v. Poulus*, 422 S.W.2d 140, 143-44 (Tex. 1967) (discussing the elements of both); *Commercial Casualty Ins. Co. v. Holmes*, 206 S.W.2d 882, 884 (Tex. Civ. App.–Austin 1947, writ ref'd n.r.e.) (discussing the elements of both). If the oath taken was mandated by law, the falsehood constituted perjury, if not, it was false swearing. *Id.; Steher v. State*, 4 S.W. 880, 881 (Tex. App, 1887); *Davidson v. State*, 3 S.W. 662, 663-64 (Tex. App. 1886). For example, one committed false swearing by

attesting, to obtain a marriage license, to a county clerk that he was the age of majority, when in fact he was not. *Davidson v. State, supra.* Under that circumstance an oath was not a prerequisite to securing the license, though the clerk was authorized to administer it. On the other hand, lying in a affidavit to secure a search warrant would be perjury since an affidavit, with its attendant oath, was a legal perquisite to securing the warrant. *Tex. Code Crim. Proc. Ann.* art. 18.01(b) (Vernon 1977). Nevertheless, by enacting §37.02 of the Penal Code, the legislature sought to vitate the difference inherent in the old law and criminalize as perjury "all [false] statements authorized to be made under oath whether or not an oath is required by law." *Tex. Pen. Code Ann.* §37.04, Practice Commentary (emphasis added).

More importantly, gone was the expressed reference to the word "affidavit." Under article 310 of the old code, the false statement prohibited by the legislature consisted of a "declaration or affidavit." *Tex. Pen. Code* art. 310; *see Rives v. State,* 296 S.W. 577, 578 (Tex. Crim. App. 1927) (stating that the "offense denounced contemplate[d] a false swearing by writing or affidavit of a thing, past or present"). Now, "any representation of fact" constitutes a statement. *Tex. Pen. Code Ann.* §37.01(3) (Vernon 1994). In adopting that definition, the legislature liberated the term from the restrictive formalities accompanying an "affidavit" and expanded the category or utterances potentially criminal.

Yet, the Appellant argues differently. She believes that "statement" means something less than any "representation of fact" when the false representation is contained in a written document. In that situation, she concludes, the document must have the attributes of an affidavit otherwise it would not be a sworn statement. The

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[1] An affidavit consists of a writing signed by the party making it, sworn to before an officer authorized to administer oaths and certified by said officer under seal of office. *Tex. Gov. Code Ann.* §321.011(1) (Vernon 1988).

argument is baseless for several reasons.

First, had the legislature intended to restrict perjury to false affidavits when a writing was involved, it would not have deleted the word from the recodified statute. Indeed, the legislature retained the term in related areas such as §18.01(b) of the Texas Code of Criminal Procedure. There it pronounced that search warrants could issue only upon "affidavit" establishing probable cause. Including "affidavit" in §18.01(b) while redacting it from the perjury statute discloses a legislative intent contrary to the Appellant's belief.

Second, in arguing as she does, the Appellant misconceives the nature of an oath and affidavit. The former, though not defined by statute, is a pledge to act in a truthful and faithful manner *Vaughn v. State*, 177 S.W.2d 59, 60 (Tex. Crim. App. 1943).
[2]This pledge is made manifest through an "unequivocal act by which [the individual] consciously takes upon himself the obligation of an oath" before someone authorized to administer an oath. *Lowry v. State,* 297 S.W.2d 848, 850(Tex. Crim. App, 1956); *Vaughn v. State*, 177 S.W.2d at 60. Thus, simply pledging to act truthfully and faithfully before someone authorized to administer oaths constitutes a valid oath. For instance, one orally pledging to the truthfulness "of statements made or to be made" confirms, by oath, the veracity of those statements. *Marsden v. Troy,* 189 S.W. 960, 964(Tex. Civ. App.--San Antonio 1916, no writ)(distinguishing between an oath and affidavit).

An affidavit is simply another way to manifest an oath. It is a pledge in written form, *Marsden v. Troy,* 189 S.W. at 964, constituting prima facie evidence that an oath was taken. *Order of Aztecs v. Noble,* 174 S.W. 623, 624(Tex. Civ. App.--Austin 1915, no writ)(dealing with a jurat). That

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2 Statute does, however, include "affirmation" within the scope of an oath. *Tex. Pen. Code Ann* §1.07(32) (Vernon 1994). Thus, one affirming an act has taken an oath.

its formalities were not met does not negate the existence of the oath; it merely vitiates the use of the instrument as proof that an oath was taken. Often, one may present other evidence to prove that particular statements were sworn to in spite of the defective instrument. *See e.g., King v. State,* 320 S.W.2d 677, 678(Tex. Crim. App. 1959)(holding that in absence of a jurat, the fact that the statement was sworn to may be shown by other evidence). Here, for example, the stipulation executed by the parties evidenced that the Appellant orally pledged to the veracity of her April 9th statement.

Mixing legislative history and case law with the plain meaning of the perjury statute, we determine that the written document created by the Appellant fell within the parameters of §37.02(a). It need not have been a affidavit. Moreover, it is not within our perview to amend the provision to mean something other than that intended by the legislature. *Leonard v. State,* 767 S.W.2d at 176.

c. Must Some Third-Party See or Rely on the Statement

The Appellant next argues that her statement could not fall within §37.02(a) since no one saw or relied upon it. She is mistaken.

The Appellant admitted in her December 2, 1992, sworn declaration that Blalack feared "Hennessey might make a complaint against him to the Judicial Conduct Commission." This spurred him to protect himself. In doing so, he not only "ordered all...clerks to write out statements" but also told the Appellant what to say. After completing hers, and knowing portions thereof to be false, she swore to its accuracy before a notary public. At that instant, the crime became choate. *Welch v. State,* S.W. 946, 946-47 (Tex. Crim. App, 1913). There was no need for anyone else to see or rely upon the document. *Id.*

d. Was the Oath Required or Authorized by Law

In her concluding paragraph under Points One, Two

and Three, the Appellant closed by saying that the "written statement is not a statement 'required or authorized by law to be made under oath.'" We again disagree.

The stipulations evinced that Chambers was a notary public. As such, she was authorized by law to administer oaths. *Tex. Gov. Code Ann.* §406.016(a) (Vernon 1990). Her authority did not wane because nothing required the Appellant to act under oath. *Campbell v. State,* 68 S.W. 513, 514(Tex. Crim. App. 1902)(holding that a notary has authority to swear persons whether it be to necessary affidavits and those required by law or those which are purely voluntary). Thus, the oath was one authorized by law.

e. Relevance of the April 9th Statement

The Appellant finally contends, in her discussion of all four points, that the April 9th statement was irrelevant under both Rules 402 and 403 of the Texas Rules of Criminal Evidence. The sole ground underlying the argument concerns whether the statement fell within the parameters of §37.02(a)(1) of the Penal Code. Since it did not, according to the Appellant, it was inadmissible and highly prejudicial. Yet, as previously developed, it was one contemplated by the statute. The Appellant having assigned no other basis on which to exclude the document, the trial court properly allowed same.

Accordingly, the order assessing community supervision and deferring adjudication is affirmed and the four points of error overruled.

Brian Quinn
Justice

Publish. *Tex. R. App. Proc.* 90(c).

FILED FOR RECORD
MAR 17 420PM'95
/s/Ann Davidson
County Clerk Lubbock County, Texas

Melissa Martin, Appellant	§	From the County Court at Law #1 Court of Lubbock County
v. No. 07-94-0199-CR	§	March 16, 1995
The State of Texas, Appellee	§	Opinion by Justice Quinn

JUDGMENT

The cause came on to be heard and because it is the opinion of this Court that no error occurred, it is ordered, adjudged and decreed that the trial court order assessing community supervision and deferred adjudication be in all things affirmed.

It is further ordered, adjudged and decreed that appellant Melissa Martin pay all costs occasioned by this appeal, for which let execution issue.

It is further ordered, adjudged and decreed that this decision be certified for observance.

FILED FOR RECORD
MAR 17 4:20 PM '95
/s/Ann Davidson
County Clerk Lubbock County, Texas

----------[Document 1 P 93]----------

Lubbock County Grand Jury Indictments, January 8, 1993

.....93-416323.....

L. J. Blalack, Official Oppression of Gerard Hennessey
Filed January 8, 1993 in District Court Lubbock County
/s/ Wayne LeCroy
The State of Texas vs. L J Blalack
No. 93-416323 PID: 103287 DOB: 12/09/22
Misdemeanor Charge: OFFICIAL OPPRESSION
District Court No: 364th Bail Recommended: $2,000.00
Date Prepared: 01/08/93 Ref#: 359394 Agency/Rpt#: DPS
In the Name and by Authority of the State of Texas:

The duly organized Grand Jury of the District Court of Lubbock County, Texas, presents in and to said Court that in Lubbock County, Texas, L J BLALACK, hereafter styled the Defendant, heretofore on or about the 9TH DAY OF APRIL, 1991, did then and there intentionally subject GERARD HENNESSEY to arrest that the defendant knew was unlawful, and the defendant was then and there acting under color of his office as a public servant, namely, Justice of the Peace, Lubbock County, Texas;
AGAINST THE PEACE AND DIGNITY OF THE STATE.
/s/Modesto Esquivel Foreman of the Grand Jury
PRESENTED THIS 8 DAY OF JANUARY, A.D. 1993

.....93-416324.....

L.J.Blalack, Official Misconduct
Filed in District Court Jan. 8, 1993 /s/ Wayne LeCroy
The State of Texas vs. L J Blalack

NO. 93-416325 PID: 103287 DOB: 12/09/22
Felony Charge: AGGRAVATED PERJURY
District Court No: 364th Bail Recommended: $5,000.00
Date Prepared:01/08/93 Ref#: 359399 Agency/Rpt#: DPS
In the Name and by Authority of the State of Texas:

The duly organized Grand Jury of the District Court of Lubbock County, Texas, presents in and to said Court that in Lubbock County, Texas, L J BLALACK, hereafter styled the Defendant, heretofore on or about the 30TH DAY OF NOVEMBER, 1992, did then and there with intent to deceive and with knowledge of the statement's meaning, intentionally and knowingly make a false statement under oath, namely, that the sworn statements made by Rose Marie Chivers, Melissa Martin, and Julie Martin concerning the conduct of Gerard Hennessey on April 9, 1991, in the office and courtroom over which the defendant presided as Justice of the Peace for Lubbock County, Texas, were in fact true statements, such sworn statement made by the defendant being then and there required by law to be made under oath, while the said defendant was then and there under an oath administered by Terry D. McEachern, Special Prosecutor, Lubbock County, Texas, under the direction of Clark Barnett, Foreman of the Lubbock County, Texas Grand Jury for the 237th District Court, such statement being false in that the defendant instructed Melissa Martin, Rose Marie Chivers, and Julie Martin to make statements that the said Gerard Hennessey was loud, rude, and abusive in the office and courtroom of said defendant, when such statements were false and untrue, and such false sworn statement by the defendant was then and there made during, and in connection with, an official proceeding, to-wit: a Grand Jury investigation, and said false sworn statement was then and there material to such proceeding in that the defendant was under investigation by the said Grand Jury for official oppression;
AGAINST THE PEACE AND DIGNITY OF THE STATE.
/s/Modesto Esquivel, Foreman of the Grand Jury
PRESENTED THIS 8 DAY OF JANUARY, A.D. 1993

The duly organized Grand Jury of the District Court of Lubbock County, Texas, presents in and to said Court that in Lubbock County, Texas, L J BLALACK, hereafter styled the Defendant, heretofore on or about the 3RD DAY OF JANUARY, 1990, did then and there intentionally subject LINDA VEGA to arrest that the defendant knew were unlawful, and the defendant was then and there acting under color of his office as a public servant, namely, Justice of the Peace, Lubbock County, Texas;

AGAINST THE PEACE AND DIGNITY OF THE STATE.

/s/Modesto Esqivel, Foreman of the Jury

PRESENTED THIS 8 DAY OF JANUARY, A.D. 1993

.....93-416327.....

Melissa Martin, Perjury

Filed in District Court, Lubbock, County January 8, 1993

/s/ Wayne LeCroy

The State of Texas vs Melissa Martin

No. 93-416327 PID: 67656 Misdemeanor Charge: PERJURY

District Court No: 364th Bail: $2,000.00 Date Prepared: 01/08/93

Ref#: 359460 Agency/Rpt#: DPS

In the Name and by Authority of the State of Texas:

The duly organized Grand Jury of the District Court of Lubbock County, Texas, presents in and to said Court that in Lubbock County, Texas, MELISSA MARTIN, hereafter styled the Defendant, heretofore on or about the 9TH DAY OF APRIL, 1991, did then and there with intent to deceive and with knowledge of the statements' meanings, intentionally and knowingly make two inconsistent statements under oath, one of the two statements being necessarily false, the first of such statements being that Gerard Hennessey was belligerent and argumentative with Justice of the Peace L J BLALACK on April 9, 1991 in the Justice of the Peace courtoom, such sworn statement being then and there authorized by law to be made under oath, while the said defendant was then and there under an oath administered by Debra Chambers; Notary Public in and for

the State of Texas, and the second of such statements being that Gerard Hennessey was not belligerent or argumentative to L J BLALACK on April 9, 1991, such statement being then and there authorized by law to be made under oath, while the said defendant was then and there under an oath administered by Charlene Pinkerton, Notary Public in and for the State of Texas; AGAINST THE PEACE AND DIGNITY OF THE STATE.
/s/Modesto Esquivel, Foreman of the Grand Jury
PRESENTED THIS 8 DAY OF JANUARY, A.D. 1993